

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

696

BRIEF FOR APPELLEES

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 22,967

DISTRICT OF COLUMBIA INSURANCE
PLACEMENT FACILITY and
JOINT UNDERWRITING ASSOCIATION,

Appellants,

v.

WALTER E. WASHINGTON, et al.,

Appellees.

Appeal From The United States District Court
For The District Of Columbia

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United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 2 1969

Nathan J. Paulson
Clerk

QUESTION PRESENTED FOR REVIEW

Since Congress, by the District of Columbia Insurance Placement Act, conferred upon the District of Columbia Court of Appeals exclusive jurisdiction to review final orders of the Superintendent of Insurance, did the District Court err when it dismissed, for want of jurisdiction, appellants' complaint for a declaratory judgment that a final order issued by the Superintendent pursuant to such Act was in excess of his authority?

This case has not been before the Court on any prior occasion.

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BRIEF FOR APPELLEES

ARGUMENT

I

The District Court properly dismissed appel-
lants' complaint for lack of jurisdiction.

Appellants contend that the District Court erred in ruling that it did not have jurisdiction to review an order of the Superintendent of Insurance which amended the definition of "basic property insurance," as that term is defined in appellants' Insurance Placement Program,

to include "'* * * 'vandalism and malicious mischief, other allied lines of fire insurance, burglary and theft, and those portions of multi-peril policies covering perils similar to those named herein.' " (J. A. 8-9.)

Appellants concede, as they must, that Section 1213 of the District of Columbia Insurance Placement Act (Title XII of Public Law 90-448, August 1, 1968, 82 Stat. 567; hereinafter "the Act") amends D. C. Code (1967, Supp. II), §11-742, so that it now provides in pertinent part that:

"(a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of Appeals has exclusive jurisdiction to review the following orders and decisions of administrative agencies of the District:

* * *

"(12) final orders and decisions of the Commissioner^[1] of the District of Columbia under the provision of the District of Columbia Insurance Placement Act." [Emphasis added.]

¹ The term "Commissioner" is defined in § 1203(a) of the Act as "the Commissioner of the District of Columbia or his designated agent." By order dated August 12, 1968, the Commissioner delegated the functions vested in him by the Act to the Superintendent of Insurance. See D. C. Code (1967, Supp. II), Title 1, Appendix, p. 48-49, Reorganization Order No. 43, Part VIII, paragraph B.

Before the Superintendent of Insurance issued his order, dated December 18, 1968 (J. A. 8-9), an action for declaratory relief in the District Court might arguably have been an appropriate means of determining the dispute which has arisen between the Superintendent and officials of the District of Columbia Insurance Placement Facility concerning whether the Superintendent could, by order, expand the definition of "basic property insurance" to include "vandalism, malicious mischief, burglary, theft, and robbery * * *." (See Section 1203(2) of the Act.) The mere filing of the action for declaratory relief, however, did not prevent the Superintendent from issuing his order. Although appellants sought to enjoin the Superintendent from issuing any order in this regard (J. A. 5), no injunction was granted by the District Court. It is thus clear that, once the Superintendent acted and issued the order of December 18, 1968 (J. A. 8-9), "exclusive jurisdiction" to review such order is in the District of Columbia Court of Appeals.²

² Promptly after the Superintendent issued his order, appellants filed in the District of Columbia Court of Appeals, pursuant to D. C. Code (1967, Supp. II), § 11-742(a)(12), a petition for review of his order. Action on the petition has been stayed, on motion of appellants pending final disposition of this case.

Despite appellants' protestations to the contrary, the order issued on December 18, 1968 (J. A. 8-9), is clearly final and reviewable. It reads in pertinent part:

"* * * I hereby amend, pursuant to the authority contained in section 1205(b) of the District of Columbia Insurance Placement Act, the second clause of the definition of 'basic property insurance' in the District of Columbia Insurance Placement Program, to read as follows:

" '(2), vandalism and malicious mischief, other allied lines of fire insurance, burglary and theft, and those portions of multi-peril policies covering perils similar to those named herein. ' " [Emphasis added.]

Merely because the details regarding the implementation of the Superintendent's order remain to be worked out, it does not follow that the order is not final and reviewable.

Appellants further contend that:

"The plaintiffs are seeking a determination of the defendants' statutory authority to take any action expanding insurance coverage under the D. C. Insurance Placement Act--they do not seek review of a particular order. * * * " (Brief, p. 6, emphasis in original.)

Thus appellants appear to assert that they are seeking relief in the District Court broader than that which might be available from the District of Columbia Court of Appeals by way of review of the Superintendent's December 18, 1968, order.

It is clear, however, from a comparison of the complaint filed in the District Court with the Superintendent's order (J. A. 2-6, 8-9) that the complaint challenges precisely the action that the Superintendent took via the order. There is no allegation in the complaint that the Superintendent threatened or intended to take any action other than that which he took by his order of December 18, 1968. It is thus plain that the only question which arguably might have been ripe for declaratory judgment disposition was whether the Superintendent of Insurance had the authority to expand the definition of basic property insurance to include vandalism, malicious mischief, burglary, theft, and robbery. Cf. National Student Association, Inc., et al. v. Hershey, ____ U. S. App. D. C. ____, ____ F. 2d ____ (No. 21,903, June 6, 1969, slip opinion, p. 10-13); Lion Manufacturing Corporation v. Kennedy, 117 U. S. App. D. C. 367, 372-373, 330 F. 2d 833, 838-839 (1964); Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U. S. 270, 273 (1941); Public Serv. Comm'n v. Wycoff Co., 344 U. S. 237, 241-244 (1952). Since this question was fully comprehended by the Superintendent's order, there was nothing left for the District Court to do but dismiss the complaint for want of jurisdiction because Congress has given to the District of Columbia Court of Appeals exclusive jurisdiction to review such orders.

II

The District Court did not rule on the merits
but dismissed for want of jurisdiction.

Appellants' second claim of error seems to be that, because the District Court wrote three pages of "ruminations" on the merits, it is not clear why the complaint was dismissed (brief, p. 10). The answer to this contention is simple: The sole ground urged by appellees in support of their motion to dismiss was that the District Court lacked jurisdiction to entertain the complaint (J. A. 6-7). The District Court clearly dismissed the complaint for this reason (J. A. 13). Moreover, at the end of its "ruminations," the court stated:

"The venture into the legislative history thus indulged in does not presume to resolve the ultimate issue of the Commissioner's authority, as that decision is properly before the District of Columbia Court of Appeals."
(J. A. 12.)

CONCLUSION

Upon the foregoing, it is respectfully submitted that the order of the District Court dismissing the complaint for want of jurisdiction was correct and in accordance with law and should, therefore, be affirmed.

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July 2, 1969